

1 Patrick R. Kitchin (SBN 162965)
2 **THE LAW OFFICE OF PATRICK R. KITCHIN**
3 565 Commercial Street, 4th Floor
4 San Francisco, CA 94111
5 Telephone: (415) 677-9058
6 Facsimile: (415) 627-9076

7 Nancy E. Hudgins, Esq. (SBN. 85222)
8 Matthew M. Grigg, Esq. (SBN 195951)
9 **LAW OFFICES OF NANCY E. HUDGINS**
10 565 Commercial Street, 4th Floor
11 San Francisco, CA 94111
12 Telephone: 415-979-0100
13 Facsimile: 415-979-0747
14 **Attorneys for Plaintiffs**
15 **Janis Keefe, Corinne Phipps, Renee Davis and**
16 **The Certified Plaintiffs' Class**

17 William J. Goines (SBN 061290)
18 **GREENBERG TRAURIG, LLP**
19 1900 University Avenue, Fifth Floor
20 East Palo Alto, CA 94303
21 Telephone: (650) 328-8500
22 Facsimile: (650) 328-8508
23 **Attorneys for Defendants Polo Ralph Lauren**
24 **Corporation; Polo Retail, LLC; Polo Ralph Lauren**
25 **Corporation, doing business in California as Polo**
26 **Retail Corporation; and Fashions Outlet of America,**
27 **Inc.**

28 **UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA**

19 ANN OTSUKA, et al.

Case No. C07-02780 SI

20 v. Plaintiffs,

21 **STIPULATION AND [PROPOSED]**
22 **ORDER MODIFYING THE**
23 **SETTLEMENT AGREEMENT**

24 POLO RALPH LAUREN CORPORATION, a
25 Delaware Corporation; et al.,

Judge: Hon. Susan Illston

26 Defendants.

27 Plaintiffs Janis Keefe, Corinne Phipps, Renee Davis and the Certified Plaintiff Class
28 ("Plaintiffs") and Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph
Lauren Corporation, doing business in California as Polo Retail Corp. and Fashions Outlet of

1 America, Inc. (“Polo” or “Defendants”) hereby seek the Court’s approval of a modification of
 2 the settlement agreement in this wage and hour class action case.

3 **I. Background**

4 A. The Settlement Agreement Provides For A \$5,000 Cap On Recovery For Loss
 5 Prevention Waiting Time And Missed Rest Breaks.

6 In their settlement agreement, the parties agreed to place a \$5,000 (Five Thousand
 7 Dollar) cap on recovery for loss prevention waiting time and missed rest breaks for all
 8 Settlement Class Members. (Docket No. 281, Exhibit A, page 9, ¶ 5(C).) The parties set the
 9 cap at \$5,000 to avoid giving Class Members a windfall if only a small portion of the Class
 10 submitted claims. For example, if only 10% of the Class had submitted claims, individual
 11 recoveries would have exceeded the total value of all claims made on their behalf.¹

12 The parties agreed any settlement funds remaining after application of the \$5,000 cap
 13 would be designated as a charitable contribution to the “State of California’s Labor &
 14 Workforce Development Agency’s General Funds, to be used at the Agency’s discretion for
 15 programs designed to protect and improve the well-being of California’s current and future
 16 workforce.” (*Id.*)

17 The settlement proceeds distribution model developed by the parties, through Dr.
 18 Hossein Borhani, Ph.D., and approved by the Court in its Order granting preliminary approval
 19 of the settlement (Docket No. 286.), assigns a value to each day or shift worked by Settlement
 20 Class Members based on the number of valid claims submitted. Dr. Borhani has now
 21 calculated the net cash settlement value available to compensate Settlement Class Members for
 22 loss prevention waiting time and missed rest breaks. The net settlement value was computed
 23 by reducing the gross settlement (\$4 million) by the following: incentive and service payments
 24 to Class Members; portions set aside for members of the Misclassification and Arrears
 25 Settlement Subclasses; claims administration fees; claims analysis service fees; and attorneys’
 26 fees and costs.

27 ¹ 34.5% percent of the Class actually submitted timely claims, resulting in a reasonable per day
 28 or shift recovery rate of \$9.60 per shift. A 10% response rate would have resulted in a per shift
 rate of more than three times his value.

1 After these reductions, the net settlement value is \$2,192,250. When this net settlement
 2 value is divided by the total number of days or shifts worked by Settlement Class Members,
 3 each work day or shift is valued at \$9.60. Thus, if a Settlement Class Member worked 100
 4 shifts, her recovery for loss prevention waiting time and missed rest breaks would be \$960 (100
 5 shifts times \$9.60 per shift).

6 To reach the \$5,000 cap on this portion of the Class recovery, a Settlement Class
 7 Member would need to have worked a total of 521 shifts. Any shifts worked in excess of 521
 8 by a Settlement Class Member would not result in additional compensation for those extra
 9 shifts. Thus, a Settlement Class Member who worked 1,300 shifts would receive the same
 10 recovery as a Member who worked 521 shifts.

11 B. *Seventy-Five Settlement Class Members Would Be Adversely Affected By The \$5,000
 12 Cap.*

13 Based on the payroll and timekeeping analyses Dr. Hossein Borhani performed after the
 14 claim period expired earlier this month, the parties have determined that the settlement
 15 recovery for 75 Settlement Class Members would be adversely affected by the \$5,000 recovery
 16 cap. If subjected to the \$5,000 cap, these 75 Settlement Class Members would forfeit more
 17 than \$208,329 for shifts they worked in excess of 521.

18 But for the recovery cap, 16 Settlement Class Members would be entitled to over
 19 \$10,000. Fifty-nine Settlement Class Members would be entitled to a recovery between \$5,001
 20 and 9,999.

21 In their settlement agreement, the parties indicated that the net settlement funds that
 22 remained after applying the \$5,000 cap would be designated a charitable contribution to the
 23 “State of California’s Labor & Workforce Development Agency’s General Funds, to be used at
 24 the Agency’s discretion for programs designed to protect and improve the well-being of
 25 California’s current and future workforce.” (Docket No. 281, Exhibit A, page 9, ¶ 5(C).)

26 The parties now agree and request Court approval to modify section 5(C) of the
 27 settlement agreement to eliminate the \$5,000 recovery cap. This modification would result in
 28 the payment of approximately \$208,329 to those 75 Settlement Class Members affected by the

1 recovery cap who worked more than 521 shifts during their employment with Polo during the
 2 class period. The parties agree that the reallocation of \$208,329 to 75 Settlement Class
 3 Members instead of to the State of California would result in a more equitable distribution of
 4 the net settlement funds.

5 C. *Lifting The Settlement Cap Would Not Adversely Affect Any Other Class Member, But,*
 6 *Instead, Would Fairly Compensate Settlement Class Members Who Worked Longest*
 7 *For Polo.*

8 No other Settlement Class Member will be affected by lifting the \$5,000 recovery cap.
 9 The remaining net settlement funds, which had been designated for donation to the State of
 10 California, simply will now be reallocated and divided among the 75 Settlement Class
 11 Members based on the number of days or shifts they worked.

12 II. Stipulation

13 Plaintiffs and Polo, by and through their attorneys of record hereby stipulate to delete
 14 from section 5(C) of the settlement agreement the following language:

15 If the number of Settlement Class Members submitting timely claims would
 16 result in a proportional award in excess of \$5,000.00 for any Settlement Class
 17 Member, the Net Settlement Amount remaining after Settlement Awards shall
 18 be designated as a charitable award to the State of California's Labor &
 19 Workforce Development Agency's General Funds, to be used at the Agency's
 20 discretion for programs designed to protect and improve the well-being of
 21 California's current and future workforce.

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1 Based on this modification, and upon the Court's final approval of the settlement, all
2 Settlement Class Members will receive a portion of the net settlement funds in accordance with
3 the total number of days or shifts they worked for Polo during the class period. With the
4 Court's approval, their individual recoveries for loss prevention waiting time and missed rest
5 breaks will not be capped at any specific level.

6

7 IT IS SO STIPULATED,

8

9 DATED: August 19, 2010

THE LAW OFFICE OF PATRICK R. KITCHIN

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By: /s/ Patrick R. Kitchin

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PATRICK R. KITCHIN

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Attorneys for Janis Keefe, Corinne Phipps
and Renee Davis and the Certified Class

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DATED: August 19, 2010

GREENBERG TRAURIG, LLP

14

By: /s/ William J. Goines

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WILLIAM J. GOINES

16

CINDY HAMILTON

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Attorneys for Defendants

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Polo Ralph Lauren Corporation; Polo

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Retail, LLC; Polo Ralph Lauren

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Corporation, doing business in California

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as Polo Retail Corporation; and Fashions
Outlet of America, Inc.

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[PROPOSED] ORDER

23

IT IS SO ORDERED.

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DATED: 8/27/10



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Honorable Susan Illston
Judge, United States District Court

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